

Claimant did not file a brief in this appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the record presented to date, the undersigned Board Member makes the following findings of fact and conclusions of law:

Claimant is 68 years old and was employed by respondent as a bus monitor. She was injured on December 2, 2004, when she slipped on a metal plate on a bus while trying to strap down a wheelchair. She injured her back, neck, hands, and shoulders.<sup>1</sup> After that injury, respondent moved her to the office doing paperwork.

Claimant also mentioned a slip and fall “on the black ice going into the school taking a sick child there.”<sup>2</sup> She hit her knees in this accident and reported it to dispatch.<sup>3</sup> Nevertheless, claimant relates her current injury and her problems with falling to her December 2, 2004, accident on the bus.

On June 22, 2006, while she was in her home taking a shower, claimant states her “legs collapsed” and she went down, hitting her right ankle.<sup>4</sup> She also said she did not slip in the shower but that her legs just buckled. Claimant testified that whenever she took a shower, she placed a wet washcloth in the tub for safety, and the shower was not slick.

Claimant was taken to the emergency room, where she was told her right ankle was fractured. She was told by hospital personnel to see Dr. Steven Howell concerning the injuries to her ankle. However, she was told by Dr. Howell’s office that he would not see her. She now uses a wheelchair and has not returned to work since she broke her ankle.

Claimant testified that after her fall on the bus in December 2004, she had problems with falling. She testified that she fell from one to four times a week and could not be left alone. A review of claimant’s medical records between December 2004 and June 2006 indicate that she complained to her chiropractor, Dr. James Bond, about an unstable right knee in February 2005, July 2005 and November 2005. A handwritten note signed by Dr. Bond dated July 6, 2006, indicated that claimant’s problems from the fall in the bus in December 2004 led to the fall in the shower in June 2006. On June 9, 2005, claimant complained to Dr. Eustaquio Abay of bilateral leg pain that worsened with prolonged standing and sitting, as well as balance problems. A report from Dr. Paul Stein dated February 1, 2006, indicates: “Walking very far is difficult because the legs become weak

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<sup>1</sup> Form K-WC E-1 (filed Mar. 7, 2006).

<sup>2</sup> P.H. Trans. (Oct. 24, 2006) at 13.

<sup>3</sup> Respondent’s brief indicates that slip and fall on ice occurred on March 3, 2003, and was the subject of a prior workers compensation claim.

<sup>4</sup> P.H. Trans. (Oct. 24, 2006) at 10.

and there is a tendency to fall. [Claimant] indicates that she has fallen on four or five occasions. Her legs ‘feel funny.’”<sup>5</sup>

In workers compensation litigation, it is the claimant’s burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>6</sup> “‘Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”<sup>7</sup>

Here, claimant relates her fall and resulting ankle injury to her leg giving way. She attributes this to her injuries suffered while working for respondent on December 2, 2004. This Board Member acknowledges that there is no direct expert medical testimony on the cause of claimant’s fall, but claimant’s testimony alone is sufficient evidence to establish her own physical condition and the existence, nature, and extent of the injury.<sup>8</sup> Furthermore, the claimant’s medical records contain a history of her being unstable on her feet and experiencing falls between December 2004 and June 2006.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*,<sup>9</sup> the court held:

When a primary injury under the Workmen’s Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

Based on the record presented to date, this Board Member finds that claimant has met her burden of proving that her right ankle injury is a direct and natural consequence of her compensable back injury suffered on December 2, 2004. It is, therefore, compensable as a work-related injury.

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<sup>5</sup> *Id.*, Cl. Ex. 1 at 99.

<sup>6</sup> K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

<sup>7</sup> K.S.A. 2005 Supp. 44-508(g).

<sup>8</sup> *Graff v. Trans World Airlines*, 267 Kan. 854, 864, 983 P.2d 258 (1999); *Hardman v. City of Iola*, 219 Kan. 840, 845, 549 P.2d 1013 (1976); *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 95, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

<sup>9</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 (1972); *see also Casco v. Armour Swift-Eckrich*, 34 Kan. App. 2d 670, Syl. ¶ 2, 128 P.3d 401 (2005).

Respondent also argues that claimant did not suffer personal injury arising out of her employment because showering is an activity of daily living.<sup>10</sup> However, claimant is not alleging that showering caused her accident; she is alleging that her leg gave way as a direct result of her prior work-related injury. Respondent does not argue that claimant's December 2, 2004, accident is not compensable. Accordingly, as claimant's June 22, 2006, accident at home was directly traceable to the injuries she suffered in the December 2, 2004, accident, her injuries suffered on June 22, 2006, are compensable as well.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>11</sup> Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>12</sup>

**WHEREFORE**, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Nelsonna Potts Barnes dated October 25, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 2007.

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BOARD MEMBER

c: Andrew E. Busch, Attorney for Claimant  
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge

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<sup>10</sup> See K.S.A. 2005 Supp. 508(e).

<sup>11</sup> K.S.A. 44-534a.

<sup>12</sup> K.S.A. 44-555c(k).